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The Federal Supreme Court (F S C) has been convened on 4.3.2018 headed by the Judge Madhat Al-Mahmood and membership of Judges Farouk Mohammed Al-Sami, Jaafar Nasir Hussein, Akram Taha Mohammed, Aboud Salih Al-Temimi, Hussein Abbas Abu Al-Temmen, Mohammed Rijab AL-Kubaisi, Suleiman Abdullah Abdul AL-Samad and Mohammed Qasim AL-Janabi who authorized in the name of the people to judge and they made the following decision:

#### The Request

The Presidency of Dhi Qar federal cassation Court/ the Head of the Court office requested from the FSC according to its letter no. (25/1/office/2018/1290) on (3.1.2018) to trying the request presented by Mr. (mim.ain.jeem) the Judge of AL- Nasiriya criminal Court dated on (2.26.2018) according to competence. After reviewing the request above-mentioned, the Court found that (mim.ain.jim) the Judge of AL-Nasriyah criminal Court requested from the FSC by his request dated on (2.26.2018) via the Head of Dhi Qar federal cassation Court to take a decision about legitimacy of article (26, 45, 47) texts of foreigners residence law no. (47) For 2017 which published in the gazette by Ref. (4466) on (10.23.2017). This law included (on 10.2.2017 the law no. (76) For 2017 of foreigners residence had been issued, and this law took place of foreigners' law no. (118) for 1978. Also it annulled the revolution leadership Council (dissolved) laws which related to regulation of Arabs and foreigners' residence. And as for legitimacy of the texts of above-mentioned articles from this law, we are listing the following: 1. Article (26) of above-mentioned law which stipulated ((the general director or whom he authorizes has the power of banishing the foreigner who entered the lands of the Republic of Iraq illegally to outside the borders)). The former law mentioned the subject of expelling the foreigner according articles (10-11) of the law. This

procedure shall be taken by a competent Court, and banishing is for foreigner who enters Iraq illegally, while banishing for foreigners who enters Iraq legally but he did not exceed allowed residence period. This mean the foreigner did not go to the residence office to renew his residency, whereas the text of article (26) grants this authority to the general director or whom he authorizes without a judicial judgment. This text had been listed as a phrase of (the general director) not (the general director shall), and this text is an exclusive authority for the general director and the text is permissive. 2. As for article (45) of above-mentioned law which texted ((if the Court issued a judgment by one of penalties stipulated in articles (41-42) of this law, it has to judge by banishing the foreigner from the Iraqi lands. In the same time, above-mentioned article did not digest to banishing or expels the foreigner in articles (39-40). These articles had been listed a penalties harder than above-mentioned articles, whereas it deals with the foreigner who enters Iraq illegally without visa, so what is the procedure which should the Court took when judging against the foreigner according articles above-mentioned in case he entered illegally. 3. as for article (47) of above-mentioned law which texted ((the general director shall granted or whom he authorizes the power of offence judge according to criminal procedure law to impose fine which stipulated in articles ((38, 39, 40, ,41, 42, 43)) of the law. This text violates the Iraqi Constitution in addition to above-mentioned texts carrying more than a part of penalties, because most of penalties sentencing with simple imprisonment or fine. So, how it grants the general director the authority of separate penalties, or what is the standard of imposing fine instead of imprisonment. This matter will lead to separate punishment text, and as it well-known according to the Constitution that penalties shall not be imposed but by judicial competent Court, and no person shall be detained or interrogated but with a judicial decision according to article (37/1<sup>st</sup>/beh) of the Republic of Iraq Constitution for 2005. Accordingly, this Court requests from the FSC to trying legitimacy of above-mentioned legal texts according to article (92) of the Court's law, and because what listed in above-mentioned texts is an intervention in judiciary work. No authority can intervene to judiciary work according to article (88) of the Constitution. With respect and appreciation. The request set for

scrutiny and deliberation by the FSC, and the Court reached the following decision:

### The Decision

After scrutiny and deliberation by the FSC, the Court found that the Judge of AL-Nasiriya criminal Court challenges his request dated on (2.26.2018) above-mentioned before this Court by unconstitutionality of articles (26, 45, 47) of foreigners' residence law no. (76) For 2017 for the reasons above-mentioned, the law of foreigners' residence law no. (76) For 2017. Worthy to mention that the judge hasn't a case tried before him may related to articles aforementioned, whereas article (3) of the FSC bylaw no. (1) For 2005 which stipulated ((if one of the courts requested during a case trying to take a decision in legitimacy of a text, legislative decision, regulation or instructions related to this case. The request shall be sent to the FSC to take a decision about it. This request shall not submit to fee)). Whereas the request didn't fulfill its formal stipulations which mentioned in the text of above-mentioned article's text. This matter obliges to reject it. Therefore, the FSC decided to reject the case formally, and the decision issued unanimously and decisively on 4.3.2018.